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7 **UNITED STATES DISTRICT COURT**
8 **SOUTHERN DISTRICT OF CALIFORNIA**
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10 MEL M. MARIN,

11 Plaintiff,

12 vs.

13 STEPHEN SHAW,

14 Defendant.

CASE NO. 01CV1403WQH

ORDER

15 HAYES, Judge:

16 The matter before the Court is the motion to correct the record (#211) by Plaintiff Mel
17 M. Marin.

18 On January 17, 2007, this Court entered an order granting the motion for summary
19 judgment in favor of the only remaining Defendant in his case. The Order stated in part “the
20 motion for summary judgment (#170) or, in the alternative, for summary adjudication of claims
21 by Defendant Stephen Shaw is granted. The Clerk is directed to enter judgment against
22 Plaintiff dismissing this action.” (Doc. No. 194.) On that same date, the Clerk of the Court
23 entered judgment pursuant to the order of the Court. (Doc. No. 195).

24 On April 2, 2007, Plaintiff moved the Court for “correction of the record to show the
25 notice of appeal stated in the record is correct, and/or an extension of time or reopening of time
26 to file a new notice.” (Doc. No. 200.) Plaintiff stated in his declaration that “I did not get the
27 judgment of January 17, 2007 from this court until March 24, 2007. ... The postal clerk said
28 a stack was outside the box on a shelf with all the old mail, some six months old, including the

1 envelope with the order from the 9th Circuit with due dates for months ago...". (Doc. No. 200
2 at 1-2.)

3 On April 2, 2007, Plaintiff filed a Notice of Appeal "from the Judgment of about
4 January 17, 2007 and against all previous and/or related rulings of the district court and
5 magistrate." (Doc. # 201).

6 On May 16, 2007, the Court granted Plaintiff's motion (#200) to reopen or extend the
7 time to file notice of appeal pursuant to Rule 4(a)(6) for a period of 14 days from the date of
8 this order.

9 On May 17, 2007, the Clerk of the District Court transmitted the certificate of record
10 to the Clerk of the United States Court of Appeals.

11 On May 22, 2007, the Clerk of the United States Court of Appeals docketed the receipt
12 of the May 17, 2007 transmission.

13 Plaintiff now moves the Court to correct the record on the grounds that "nothing has
14 happened on the appeal." (Doc # 211).

15 The filing of a notice of appeal divests the district court of jurisdiction over those
16 aspects of the case involved in the appeal. *Griggs v. Provident Consumer Discount Co.*, 459
17 U.S. 56, 58, 103 S.Ct 400, 402 (1982) (per curiam). "It [is] generally understood that a federal
18 district court and a federal court of appeals should not attempt to assert jurisdiction over a case
19 simultaneously." *Id.* There are no matters before this Court that are not currently on appeal.
20 This Court has no jurisdiction to correct the record on the grounds that nothing has happened
21 on appeal.

22 IT IS HEREBY ORDERED that the motion to correct the record (#211) by Plaintiff
23 Mel M. Marin is denied.

24 DATED: September 4, 2007

25 
26 **WILLIAM Q. HAYES**
27 United States District Judge
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